

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

U.S. ETHERNET INNOVATIONS, LLC,

Plaintiff,

v.

ACER, INC.; ACER AMERICA
CORPORATION; APPLE, INC.; ASUS
COMPUTER INTERNATIONAL; ASUSTEK
COMPUTER, INC.; DELL, INC.;
FUJITSU, LTD.; FUJITSU AMERICA,
INC.; GATEWAY, INC.; HEWLETT
PACKARD CO.; SONY CORPORATION;
SONY CORPORATION OF AMERICA; SONY
ELECTRONICS INC.; TOSHIBA
CORPORATION; TOSHIBA AMERICA,
INC.; and TOSHIBA AMERICA
INFORMATION SYSTEMS, INC.,

Defendants,

INTEL CORPORATION; NVIDIA
CORPORATION; MARVELL
SEMICONDUCTOR, INC.; Atheros
COMMUNICATIONS, INC.; and
BROADCOM CORPORATION,

Intervenors.

No. C 10-3724 CW

ORDER ADDRESSING
MOTIONS TO SEAL
(Docket Nos. 852,
874, 884, 777,
887)

AND ALL RELATED CLAIMS,
COUNTERCLAIMS AND THIRD-PARTY
CLAIMS

The Court addresses the pending motions to seal in the above
captioned cases as follows:

I. Docket No. 852:

USEI moved to file under seal Exhibits A-F, J, and K attached
to the Declaration of David Gann in support of its motion for
leave to amend infringement contentions. Docket No. 852. USEI
states that each of the documents contains information designated

1 by Intel as "Highly Confidential - Attorney's Eyes Only." On
2 August 16th, 2013, Intel submitted the Declaration of Seth Sproul
3 in support of USEI's motion to seal. Docket No. 868. Intel
4 withdrew the designation of confidentiality for the materials
5 included in Exhibits C-D, K to the Gann Declaration. Intel
6 submits that the following exhibits contain proprietary Intel
7 source code that should not be available to the public: Exhibits A
8 at 4-5; B at 5; and F at 35, 37. Intel represents that public
9 release could result in a competitive disadvantage for Intel and
10 that Intel would be harmed if this material were made public.
11 Dynetix Design Solutions Inc. v. Synopsys Inc., 2013 WL 2285210
12 (N.D. Cal.). Intel additionally represents that Exhibit J is
13 confidential deposition testimony of Intel engineer Itamar Sharoni
14 that discusses the proprietary technology contained in these
15 exhibits. Intel has submitted a redacted version of these
16 exhibits to the public record. Because these exhibits do contain
17 proprietary source code and discuss confidential technology, Intel
18 has provided good cause for sealing this content. Accordingly,
19 these exhibits may be filed under seal.

20 Intel also states that Exhibits E at 1-20 and F at 1-34, 35,
21 37, 38 include portions of a confidential design document and a
22 description of a source code not available to the public. Intel
23 has submitted a redacted version of these exhibits to the public
24 record. Because these exhibits do contain material that will
25 result in a competitive disadvantage, they may be filed under
26 seal.

27 Accordingly, the Court GRANTS USEI's motion to seal in regard
28 to Exhibits A at 4-5; B at 5; E at 1-20; F at 1-35, 35, 37-38; J;

1 and K. Within four days of the date of this order, USEI shall
2 file Exhibits C, D, and K in the public record.

3 II. Docket No. 874

4 Intel moved to file under seal Exhibit K to the Declaration
5 of Justin Constant. Docket No. 874. Intel alleges that Exhibit K
6 contains a portion of a confidential draft design specification
7 for a product not released to the public. Intel alleges that
8 public release could result in a competitive disadvantage for
9 Intel. Upon review of this document, this Court GRANTS Intel's
10 motion to seal.

11 III. Docket No. 884:

12 USEI moved to file under seal Corrected Exhibit F and
13 Exhibits O, P, Q, R, S and U to the Second Declaration of David
14 Gann in support of its reply in support of its motion for leave to
15 amend infringement contentions. Docket No. 884. USEI stated that
16 the materials in these exhibits had been designated by Intel as
17 "Highly Confidential - Attorney's Eyes Only." On September 11,
18 2013, pursuant to Civil Local Rule 79-5(d), Intel filed the
19 Declaration of Frank Albert in support of Linex's motion to seal.
20 Docket No. 893. Intel withdrew the designation of confidentiality
21 for Exhibit U. Intel testifies that the corrected Exhibit F
22 incorporates source code from portions of Exhibit O; Exhibit O is
23 an excerpt of source code from Intel's driver; Exhibit P provides
24 a detailed description of the confidential design of Intel's
25 networker controllers; Exhibit Q refers to a draft specification
26 for a design that was never released by Intel; and Exhibits R and
27 S provide descriptions of confidential design elements for
28 proposed products. After reviewing these exhibits, the Court

1 finds that these documents contain proprietary information
2 regarding Intel's technology. Accordingly, these exhibits are
3 sealable. Within four days of the date of this order, USEI will
4 submit Exhibit U to the Second Gann Declaration in the public
5 record.

6 IV. Docket No. 777

7 On May 28, 2013, Intel moved to file under seal Exhibit 2 to
8 the Declaration of Seth M. Sproul in support of its opposition to
9 USEI's motion regarding sanctions. Docket No. 777. In its motion
10 and supporting declaration, Intel stated that Exhibit 2 consists
11 of excerpts from the deposition "testimony from third-party
12 subpoena recipient Richard Baker," which includes "confidential
13 information of Mr. Baker, defendant Hewlett-Packard's predecessor
14 in interest (3Com) and a third party customer of 3Com." Mot. at
15 2; see also Sproul Decl. ¶ 2.

16 On August 14, 2013, the Court found that Intel had not
17 identified the third-party customer of 3Com whose confidential
18 information is in Exhibit 2 and had not provided proof of service
19 of the motion or exhibit upon Mr. Baker or the third-party 3Com
20 customer. Docket No. 857 at 9-10. The Court gave Intel one day
21 to provide proof of service to Mr. Baker and the third-party 3Com
22 customer. The Court ordered that, within seven days thereafter,
23 Mr. Baker and the third-party 3Com customer should file and serve
24 with the Court a declaration establishing that Exhibit 2 is
25 sealable. On August 15, 2013, Intel provided the Court with proof
26 of service on Mr. Baker and IBM. Docket No. 864. No party has
27 submitted a declaration establishing that Exhibit 2 is sealable.
28 Accordingly, the Court DENIES Intel's motion to seal. Within four

1 days of the date of this order, Intel shall file Exhibit 2 to the
2 Sproul Declaration in the public record.

3 V. Docket No. 887

4 Intel moved to seal Exhibit A to the Declaration of Justin
5 Constant. Docket No. 887. Intel represents that Exhibit A
6 includes a portion of the transcript of the deposition of USEI and
7 that it was designated "highly confidential" by USEI. In
8 addition, Intel files a redacted version of its opposition to
9 USEI's motion for leave to file motion for reconsideration because
10 it contains discussion of Exhibit A.

11 USEI has not filed a declaration in support of Intel's motion
12 to seal as required by Civil Local Rule 79-5(e). Accordingly, the
13 Court DENIES Intel's motion to seal. Within four days of the date
14 of this order, Intel shall file these exhibits to the declaration
15 and the unredacted version of its motion in the public record.

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17 IT IS SO ORDERED.

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19 Dated: 11/22/2013

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CLAUDIA WILKEN
United States District Judge